

UTAH POWER & LIGHT CO.

IBLA 89-651

Decided January 15, 1990

Appeal from a decision of the Utah State Office, Bureau of Land Management, terminating coal lease SL-048223.

Affirmed.

1. Coal Leases and Permits: Diligence--Coal Leases and Permits: Termination

Sec. 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207 (1988), requires that any coal lease not producing in commercial quantities at the end of the 10-year diligent development period be terminated. No suspension of this obligation to commence production is authorized by statute or regulation.

APPEARANCES: Paul H. Proctor, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Utah Power & Light Company has appealed from an August 4, 1989, decision of the Utah State Office, Bureau of Land Management (BLM), terminating coal lease SL-048223 for failure to meet diligent development requirements.

Coal lease SL-048223 was issued April 5, 1930, and readjusted effective June 1, 1979. Appellant acquired the lease by assignment effective July 1, 1982.

Section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207 (1988), provides in part:

(a) Term of lease; annual rentals; royalties, readjustment of conditions

A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated.

(b) Diligent development and continued operation; suspension of condition on payment of advance royalties

Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). * * * Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to a commencement of production at the end of ten years.

Section 3 of the lease as readjusted required diligent development "so that coal is actually produced in commercial quantities before June 1, 1986." ^{1/} Under 43 CFR 3452.3(a) "[a]ny lease issued or readjusted after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements." Diligent development is defined at 43 CFR 3480.0-5(12) and (13) as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." For leases issued prior to August 4, 1976, the diligent development period is a 10-year period beginning on the effective date of the first lease readjustment after August 4, 1976. 43 CFR 3480.0-5 (13).

As noted in BLM's decision, the diligent development period for lease SL-048223 began on June 1, 1979, the effective date of readjustment. Having found that diligent development requirements had not been achieved, BLM determined that "this lease is hereby terminated by operation of law effective June 1, 1989."

As a preliminary matter, we note that BLM's decision is styled "Coal Lease Terminated by Operation of Law." Both the statute (30 U.S.C. § 207 (1988)) and the regulation (43 CFR 3452.3(a)) employ identical language mandating that a lease "shall be terminated" if diligent development requirements are not met. Thus, termination of a coal lease is not an event triggered automatically "by operation of law" as is the case of oil and gas leases under 30 U.S.C. § 188(b) (1988). Under that provision, when a lessee fails to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of production, the lease "shall automatically terminate by operation of law." In the case at bar, however, the coal lease was terminated by BLM's ministerial action of issuing a decision to that effect, and not automatically, by operation of law.

Appellant asserts that lease SL-048223 provided the most commercially practical "portal" through which larger, adjacent coal properties could be mined. Appellant states that termination of the lease forecloses practical

^{1/} Commercial quantities is defined as 1 percent of recoverable coal reserves. 43 CFR 3480.0-5(a)(6).

development "of the main coal resource." Appellant contends that termination is discriminatory because diligent development on SL-048223 was to commence earlier than on a large, adjacent coal lease.

[1] As the Board observed in Mountain States Resources Corp., 92 IBLA 184, 93 I.D. 239, 242 (1986), the language of FCLAA, its legislative history, and the Department's regulations all foreclose a suspension of the diligent development requirement. Under 30 U.S.C. § 207 (1988), "[a]ny lease which is not producing in commercial quantities at the end of ten years shall be terminated." The last sentence of 30 U.S.C. § 207(b) (1988) provides that nothing in that subsection "shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years."

In enacting the requirement that a lease not producing in commercial quantities at the end of 10 years shall be terminated, Congress was responding to the widespread speculation that pervaded the coal leasing program prior to 1976. As we noted from our discussion of FCLAA's legislative history in Mountain States Resources, supra at 191, 93 I.D. at 243, Congress was aware of, and confirmed the view that the requirement for diligent development could not be suspended. Accordingly, Departmental regulation 43 CFR 3475.5 provides that each coal lease shall require diligent development. Since diligent development is synonymous with production of commercial quantities prior to the end of the diligent development period, failure to meet this requirement subjects the lease to termination under 30 U.S.C. § 207(a) (1988).

Under the statutory and regulatory schemes, each lease is treated as a unit, and each must independently meet production requirements according to the timetable governing that particular lease. Appellant has not alleged that it has tried to develop the lease in any way. Under these circumstances we conclude BLM was required to terminate the lease, since a continuation of the lease would have been tantamount to an impermissible suspension of the diligent development requirement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge